

ASSEMBLY BILL

No. 2191

Introduced by Assembly Member Mullin

February 20, 2008

An act to amend Sections 24950 and 25100 of the Education Code, to amend Section 1153 of, and to repeal Section 12420.2 of, the Government Code, and to amend Section 770.3 of the Insurance Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2191, as introduced, Mullin. Public employees: annuities.

Existing law prohibits state and local agencies from negotiating life and disability insurance or requiring the placing of that insurance through particular agents, brokers, or companies, except to the extent that the state has a direct financial interest in the subject of the insurance, as specified. Existing law excepts from these provisions a tax-sheltered annuity under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code to be placed or purchased for an employee, as specified. Existing law permits the Controller to purchase annuity contracts for permanent employees of specified state entities. Existing law requires an annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code to be offered to all employees of any state agency who are members of the State Teachers' Retirement Plan. The Teachers' Retirement Law provides a registration process for information relating to tax-deferred retirement investment products.

This bill would eliminate the authority of the Controller to purchase annuity contracts for employees of state entities, as described above. The bill would require the Teachers' Retirement Board of the State

Teachers' Retirement System to offer an annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code to eligible employees of the entities formerly served by the Controller. The bill would make the registration process for information relating to tax-deferred retirement investment products applicable to these entities. The bill would make conforming changes and delete obsolete references.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 24950 of the Education Code is amended
2 to read:
3 24950. (a) An annuity contract and custodial account as
4 described in Section 403(b) of the Internal Revenue Code of 1986
5 shall be offered to ~~all~~ :
6 (1) All employees of any state agency who are members of the
7 plan under this part ~~or any~~.
8 (2) Any employee of a local public agency or political
9 subdivision of this state that employs persons to perform creditable
10 service subject to coverage by the plan under this part. ~~The~~
11 (3) Permanent employees of any the following entities who are
12 eligible:
13 (A) State Department of Education.
14 (B) Department of Corrections and Rehabilitation.
15 (C) Board of Governors of the California Community Colleges.
16 (D) State Department of Mental Health.
17 (E) California Maritime Academy.
18 (F) Commission for Teacher Credentialing.
19 (G) State Department of Developmental Services.
20 (H) California State Library.
21 (I) California Postsecondary Education Commission.
22 (J) Department of Consumer Affairs.
23 (K) Board of Vocational Nurse and Psychiatric Technician
24 Examiners.
25 (L) Board of Registered Nursing.
26 (b) The following criteria shall apply to that annuity contract
27 and custodial account:
28 (a)

1 (1) The annuity contract and custodial account shall be offered
2 for at least five years.

3 ~~(b)~~

4 (2) The annuity contract and custodial account may be
5 administered by a qualified third-party administrator that shall,
6 under agreement with the system, provide custodial, investment,
7 recordkeeping, or administrative services, or any combination
8 thereof. The third-party administrator may not provide investment
9 options other than pursuant to a shareholders' services agreement
10 between the third-party administrator and the investment manager.

11 ~~(e)~~

12 (3) The investment options offered shall be determined by the
13 board consistent with those annuity contract and custodial accounts
14 described in Section 403(b) of the Internal Revenue Code of 1986.

15 ~~(d)~~

16 (4) The system's investment staff shall make recommendations
17 to the board as to the appropriate investment options. At a
18 minimum, the board shall offer at least three investment options.
19 The board shall have sole responsibility for the selection of service
20 providers.

21 ~~(e)~~

22 (5) All contributions made in accordance with the provisions
23 of Section 403(b) of the Internal Revenue Code of 1986 and this
24 section shall be remitted directly to the administrator and held by
25 the administrator in a custodial account on behalf of the employee.
26 Any investment gains or losses shall be credited to those accounts.
27 The forms of payment and disbursement procedure shall be
28 consistent with those generally offered by similar annuity contracts
29 and custodial accounts and applicable federal and state statutes
30 governing those contracts and accounts.

31 ~~(f)~~

32 (6) Any employer, other than the state, may elect to make
33 contributions to the employee's annuity contract and custodial
34 account on behalf of the employee. The employer shall take
35 whatever action is necessary to implement this section, including
36 the adoption of an annuity contract and custodial account, or
37 provide the appropriate authorization in accordance with the
38 provision of Section 403(b) of the Internal Revenue Code of 1986.
39 Employer contributions made under this section are excluded from

1 the definition of creditable compensation as provided in Section
2 22119.2.

3 ~~(g)~~

4 (7) The design and administration of the annuity contract and
5 custodial account shall comply with the applicable provisions of
6 the Internal Revenue Code of 1986 and the Revenue and Taxation
7 Code. Section 770.3 of the Insurance Code shall not be applicable.

8 SEC. 2. Section 25100 of the Education Code is amended to
9 read:

10 25100. (a) The board shall establish a vendor registration
11 process through which information about tax-deferred retirement
12 investment products as described in Section 403(b) of the Internal
13 Revenue Code of 1986 shall be made available for consideration
14 by public employees of all local school districts, community college
15 districts, ~~and~~ county offices of education, *and all entities described*
16 *in Section 24950.*

17 (b) For the purposes of this chapter, “403(b) product or 403(b)
18 products” means tax-deferred retirement investment products as
19 described in Section 403(b) of the Internal Revenue Code of 1986,
20 and its subsequent amendments, and complying with applicable
21 California insurance laws, and federal and California securities
22 laws and rules as applied by appropriate regulatory entities.

23 (c) For the purposes of this chapter, “vendor” means a public
24 retirement system, broker-dealer, registered investment company,
25 nonbank custodian, or life insurance company qualified to do
26 business in California that provides 403(b) products. “Vendor”
27 does not include individual registered representatives, brokers,
28 financial planners, or agents. “Nonbank custodian” means a fund
29 custodian, other than a bank, that meets the criteria of a trustee
30 specified in Section 408(a)(2) of the Internal Revenue Code.
31 “Broker-dealer” means only those broker-dealers who offer a
32 proprietary 403(b) product or who charge fees that are otherwise
33 not disclosed.

34 SEC. 3. Section 1153 of the Government Code is amended to
35 read:

36 1153. The Controller shall provide for the administration of
37 payroll deductions as set forth in Sections 1151, 1151.5, and 1152,
38 *and properly authorized deductions for salary reductions pursuant*
39 *to Section 12420.2, and may establish, by rule or regulation,*
40 *procedures for that purpose.*

1 In administering these programs the Controller shall:

2 (a) Make, cancel, or change a deduction or reduction at the
3 request of the person or organization authorized to have the
4 deduction or reduction. All requests shall be made on forms
5 approved by the Controller.

6 (b) Obtain a certification from any state agency, employee
7 organization, or business entity requesting a deduction or reduction
8 that they have and will maintain an authorization, signed by the
9 individual from whose salary or wages the deduction or reduction
10 is to be made.

11 (c) Provide for an agreement from individuals, organizations,
12 and business entities receiving services to relieve the state, its
13 officers and employees, of any liability that may result from
14 making, canceling, or changing requested deductions or reductions.
15 However, no financial institution receiving a payroll service
16 pursuant to this section shall be required to reimburse the state for
17 any error in the payroll service received by that financial institution
18 after 90 days from the month in which the payroll service was
19 deducted from an individual's paycheck.

20 (d) Determine the cost of performing the requested service and
21 collect that cost from the organization, entity, or individual
22 requesting or authorizing the service. Services requested which
23 are incidental, but not necessary, to making the deduction may be
24 performed at the Controller's discretion with any additional cost
25 to be paid by the requester. At least 30 days prior to implementation
26 of any adjustment of employee costs pursuant to Section 12420.2,
27 the Controller shall notify in writing any affected employee
28 organization.

29 (e) Prior to making a deduction for an employee organization
30 or a bona fide association, determine that the organization or
31 association has been recognized, certified, or registered by the
32 appropriate authority.

33 (f) Decline to make salary services for any individual,
34 organization, or entity if the Controller determines that it is not
35 administratively feasible or practical, or if the Controller
36 determines that the individual, organization, or entity requesting
37 or receiving the salary service has failed to comply with any statute,
38 rule, regulation, or procedure for the administration of salary
39 services.

1 (g) Make, cancel, or change a deduction or reduction not later
2 than the month subsequent to the month in which the request is
3 received. Except as provided in subdivision (c), all cancellations
4 or changes shall be effective when made by the Controller.

5 (h) At the request of a state agency, transfer employee deduction
6 authorization for a state-sponsored benefit program from one
7 provider to another if the benefit and the employee contribution
8 remain substantially the same. Notice of the transfer shall be given
9 by the Controller to all affected employees.

10 SEC. 4. Section 12420.2 of the Government Code is repealed.

11 ~~12420.2. The Controller may purchase annuity contracts for~~
12 ~~permanent employees of the State Department of Education,~~
13 ~~Department of the Youth Authority, Board of Governors of the~~
14 ~~California Community Colleges, Department of Corrections, State~~
15 ~~Department of Mental Health, California Maritime Academy,~~
16 ~~Commission for Teacher Credentialing, State Department of~~
17 ~~Developmental Services, California State Library, California~~
18 ~~Postsecondary Education Commission, Private Postsecondary~~
19 ~~Vocational Education Council, Department of Consumer Affairs,~~
20 ~~Board of Vocational Nurse and Psychiatric Technician Examiners,~~
21 ~~and the Board of Registered Nursing, and shall reduce the salary~~
22 ~~of each employee for whom an annuity contract is purchased by~~
23 ~~the amount of the cost thereof provided that all of the following~~
24 ~~conditions are met:~~

25 ~~(a) The annuity contract is under an annuity plan which meets~~
26 ~~the requirements of subdivision (b) of Section 403 of the Internal~~
27 ~~Revenue Code and Section 17512 of the Revenue and Taxation~~
28 ~~Code.~~

29 ~~(b) The employee makes application to the Controller for the~~
30 ~~purchase and reduction of salary.~~

31 ~~(c) All provisions of the Insurance Code applicable to the~~
32 ~~purchase of those annuities are satisfied.~~

33 SEC. 5. Section 770.3 of the Insurance Code is amended to
34 read:

35 770.3. No state department or agency shall negotiate any life
36 or disability insurance or require the placing of that insurance
37 through particular agents, brokers, or companies, except to the
38 extent that the state has a direct financial interest in the subject of
39 the insurance. The state has no financial interest in an annuity
40 purchased for an employee if the premium therefor is paid from a

1 deduction from or reduction in the employee's salary, and any
2 annuity paid for through a deduction or reduction shall not be
3 deemed to have been provided by the state for its employees for
4 purposes of this section, and the state shall not negotiate or require
5 the placing of the annuity through particular agents, brokers, or
6 companies. Nothing contained in this section shall affect the
7 program of life and disability insurance in connection with
8 veterans' farm and home purchases through the Department of
9 Veterans Affairs except that the total life insurance benefit under
10 that program shall in no event exceed 120% of the unpaid contract
11 balance. Except in those cases where the premium for an annuity
12 is paid entirely from a deduction from or reduction in an
13 employee's salary, nothing contained in this section shall affect
14 life or disability insurance programs which may be provided by
15 the state for its employees.

16 Notwithstanding anything in this section to the contrary, in any
17 case in which a tax-sheltered annuity under an annuity plan which
18 meets the requirements of Section 403(b) of the Internal Revenue
19 Code of 1954 is to be placed or purchased for an employee, the
20 employee shall have the right to designate the licensed agent,
21 broker, or company through whom the employee's employer shall
22 arrange for the placement or purchase of the tax-sheltered annuity.
23 In any case in which the employee has designated an agent, broker,
24 or company, the employer shall comply with that designation;
25 ~~except in the case of designations subject to Sections 1153 and~~
26 ~~12420.2 of the Government Code.~~

27 As used in this section, "state department or agency" shall
28 include, but not be limited to, school districts.

29 This section shall apply to all local governmental agencies, as
30 well as state departments and agencies.

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